

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

KIMBERLY A. THOMPSON,

Plaintiff,

v.

JAMIE A. QUICK, et al.,

Defendants.

ORDER

08-CV-6332P

Plaintiff in the above-captioned matter has filed a *pro se* personal injury action on the basis of diversity jurisdiction. (Docket # 1). On August 18, 2009, plaintiff filed a motion to appoint counsel. (Docket # 20).

The Court is permitted to appoint counsel to assist indigent litigants pursuant to 28 U.S.C. § 1915(e). *See, e.g., Sears, Roebuck and Co. v. Charles W. Sears Real Estate, Inc.*, 865 F.2d 22, 23 (2d Cir. 1988). Such assignment of counsel is clearly within the judge's discretion. *In re Martin-Trigona*, 737 F.2d 1254 (2d Cir. 1984). The factors to be considered in deciding whether or not to assign counsel include the following:

1. Whether the indigent's claims seem likely to be of substance;
2. Whether the indigent is able to investigate the crucial facts concerning his claim;
3. Whether conflicting evidence implicating the need for cross-examination will be the major proof presented to the fact finder;
4. Whether the legal issues involved are complex; and

5. Whether there are any special reasons why appointment of counsel would be more likely to lead to a just determination.

Hendricks v. Coughlin, 114 F.3d 390, 392 (2d Cir. 1997); *see also Hodge v. Police Officers*, 802 F.2d 58 (2d Cir. 1986).

The Court must consider the issue of appointment carefully, of course, because “every assignment of a volunteer lawyer to an undeserving client deprives society of a volunteer lawyer available for a deserving cause.” *Cooper v. A. Sargenti Co., Inc.*, 877 F.2d 170, 172 (2d Cir. 1989). With this understanding, the Court has reviewed the facts presented herein in light of the factors required by law and finds that the appointment of counsel is appropriate in this matter.

Accordingly, plaintiff’s motion for the appointment of counsel is **GRANTED**.

The Court hereby assigns Kathryn K. Lee, Esq. and Matthew F. Belanger, Esq. of Faraci Lange, 28 East Main Street, Suite 100, Rochester, New York 14614, *pro bono*, to faithfully and diligently represent the plaintiff in this case.

The Clerk of the Court is directed to copy the file in this matter and send it to Kathryn K. Lee and Matthew F. Belanger, together with a copy of this order and the Guidelines Governing Reimbursement from the District Court Fund of Expenses Incurred by Court Appointed Counsel.¹

¹ This information and the forms are also available on the Court’s web site at the Attorney Information link from the home page located at <<http://www.nywd.uscourts.gov/>>.

A **status conference** will be held with the undersigned at 2310 U.S. Courthouse,
100 State Street, Rochester, New York on **November 19, 2009**, at **11:00 a.m.**, to discuss the
status of the case.

IT IS SO ORDERED.

s/Marian W. Payson

MARIAN W. PAYSON
United States Magistrate Judge

Dated: Rochester, New York
October 14, 2009